

August 5, 2011

TO: ALL INTERESTED PARTIES

TITLE 2. SUBCHAPTER 6, ARTICLE 3

NOTICE OF PROPOSED REGULATORY ACTION

THE DEPARTMENT OF GENERAL SERVICES, REAL ESTATE SERVICES DIVISION, PROPOSES TO ADOPT REGULATION SECTION 1880, TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO APPRAISAL REPORTS FOR THE STATE OF CALIFORNIA FOR ACQUISITION OF CONSERVATION LANDS

NOTICE IS HERBY GIVEN that the Department of General Services (DGS), Real Estate Services Division (RES), proposes to adopt the above-referenced regulation section contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the DGS, RES, no later than 15 days prior to the close of the written comment period. If no public hearing is requested, the RES on its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The RES is proposing to adopt the above referenced regulation sections under the authority provided by Section 5096.501(a) and 5096.517 of the Public Resources Code. The proposal interprets and makes specific reference Section 1130, Part 3, Division 4 of the Business and Professions Code and Section 3701, Title 10 of the CCR.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The RES is a full-service real estate organization. Through a diversified team of highly competent and knowledgeable professionals, the RES's highest priority is to fulfill State agencies' facility and real property needs. The proposed regulations implement provisions contained in Senate Bill 1285, Chapter 711, Statutes of 2008, and direct the DGS, with approval of the Natural Resources Agency, to develop and adopt standards for the appraisal of resource conservation lands identified as either State agency direct purchase or State-funded grant acquisitions.

Current law provides that the State can purchase conservation lands with the approval of the Director of Department of General Services (DGS) [Government Code Section 11005.2], and in some cases requires DGS appraisal review [FG Section 1348.2, PRC Section 5096.512]. Part of the due diligence involved in that process is the approval of the value or price being paid. There is no existing law providing standards for the appraisal reports being reviewed, except the Business and Professions/CCR reference in paragraph two of these proposed regulations and FG Section 1348.2 and PRC Section 5096.51. This requirement is basically that appraisers must be licensed and therefore their work must conform to the United Standards of Professional

Appraisal Practice (USPAP), a set of national standards and guidelines for appraisal reports. There is no provision in law for DGS approval of grant funded acquisitions, unless the State is taking title, agencies often have the DGS review their appraisals as part of their due diligence. So while DGS review appraisal services are called for in law and appraisers must follow the general guidelines in the USPAP, there is nothing that actually sets forth standards for the appraisal reports specifically submitted to the DGS.

IMPACT ON LOCAL AGENCIES

The RESD has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or individual persons to incur additional costs in order to comply with the proposed regulations.

ECONOMIC IMPACT

The RESD has assessed the potential for significant adverse economic impact on businesses or private persons that might result from the proposed regulatory action and the following determinations have been made relative to the required statutory categories:

- The RESD has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- There will be no impact in the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California.
- The RESD is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs or savings in federal funding to the State.
- There are no costs or savings to any State agency.
- The RESD has made an initial determination that there will be no impact on housing costs.

EFFECT ON SMALL BUSINESSES

It has been determined that the adoption of the regulation sections will not affect small businesses in the ways identified in subsections (a)(1)-(4), Title, CCR. There is no effect on small business because these regulations are really nothing more than a very basic set of minimum standards, which in general are already consistent with industry practices, and not in excess of standards already required in the USPAP for a level of reporting sufficient for efficient review. The licensing requirement is already found in existing law as noted above under "INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW."

SUBMISSION OF COMMENTS, DOCUMENTS, AND ADDITIONAL INFORMATION

Any interested person must present statements, arguments, or contentions, in writing and submit via U.S. mail, e-mail, or fax, to the RESD no later than September 19, 2011 at 5:00 p.m. The express terms of the proposed regulations as well as the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action, should be addressed to:

Mr. James S. Martin

Mailing Address: Department of General Services
Real Estate Services Division
Professional Services Branch
707 Third Street, 5th Floor
West Sacramento, CA 95605

E-mail Address: SB1285@dgs.ca.gov

Fax No.: (916) 375-4149

AGENCY CONTACT PERSON

General or substantive questions regarding the Notice of Proposed Regulatory Action may be directed to Mr. James Martin at (916) 375-4032. If Mr. Martin is not available, these questions may be directed to the alternate contact person, Mr. Mike Butler at (916) 375-4152.

ADOPTION OF REGULATIONS

Please note that following the public comment period, the RESD may adopt the regulations substantially as proposed in this notice or with modifications which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the RESD adopts the regulations.

SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the RESD intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the RESD is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout/underline.
2. A copy of this notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the RESD is relying in proposing the adoption.

As data and other factual information, studies, reports, or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the RESD during normal working hours. Items 1 through 3 are also available on the RESD Internet Website at: <http://www.dgs.ca.gov/resd>.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the RESD must determine that no reasonable alternative it considered or that has otherwise been indentified and brought to the attention of the RESD would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from Mr. Martin named above in this notice or may be accessed on the Web-site listed above.

Title 2. Administration
Division 2. Financial Operations
Chapter 3. Department of General Services
Subchapter 6. Real Estate Services Division
Article 3. Appraisal Review by the State
Subarticle 1. Appraisal Reports Requirement

Adopt Regulation Section 1880

Section 1880. Appraisals.

Appraisal reports prepared for the acquisition of any land or interest therein by or with funding from an "acquisition agency" as defined in Public Resources Code Section 5096.501(a) must conform to the following minimum standards in order to be considered for Appraisal Review by the State.

- (a) Appraisal reports shall be prepared by, and include a signature by, an appropriately Licensed or Certified Real Estate Appraiser in good standing (pursuant to Part 3, commencing with Section 11300 of Division 4 of the Business and Professions Code, and the California Code of Regulations Section 3701).
- (b) Appraisal reports shall include descriptive photographs and maps of sufficient quality and detail to clearly depict the subject property and any market data relied upon, including the relationship between the location of the subject property and the market data.
- (c) Appraisal reports shall include a complete description of the subject property land, site characteristics and improvements. Valuations based on a property's development potential shall include:
 - (1) Verifiable data on the development potential of the land (e.g., Certificates of Compliance, Tentative Map, Parcel Map, Final Map).
 - (2) A description of what would be required for a development project to proceed (e.g., legal entitlements, infrastructure).
 - (3) Presentation of evidence that sufficient demand exists, or is likely to exist in the future, to provide market support for the development.
- (d) Appraisal reports shall include a statement by the appraiser indicating to what extent land title conditions were investigated and considered in the analysis and value conclusion (a Preliminary Report should be included as an attachment to the appraisal report when available).
- (e) Appraisal reports shall include a discussion of implied dedication, prescriptive rights or other unrecorded rights (Civil Code Sections 801-813, 1006-1009) that may affect value, indicating the extent of investigation, any knowledge of, or observation of conditions that might indicate evidence of public use. If the appraiser has no knowledge of, or has not observed such conditions, a statement to that effect shall be included in the appraisal report. (This regulation does not require the appraiser to render an opinion regarding the legality of any such unrecorded right.)
- (f) Appraisal reports including more than nominal value for specialty interests, including but not limited to timber, water, minerals, or carbon credits, shall include a separate valuation prepared and signed by a certified or registered professional qualified in the field of specialty interest. This valuation shall be reviewed and approved by a second qualified, certified or registered professional, considered by the appraiser, and appended to the appraisal report.

Note: Authority cited: Section 5096.517, Public Resources Code.

Reference: Sections 5096.501 and 5096.517, Public Resources Code.